

Internal Revenue Service
memorandum

CC:TL:Br3
WEArmstrong

date: AUG 16 1990

to: District Counsel, Sacramento W:SAC

from: Assistant Chief Counsel (Tax Litigation) CC:TL

subject: [REDACTED]

[REDACTED]
TL-N-7114-90

CC:TL:Br3 Armstrong/Levine
I.R.C. §§ 6061, 6065, 6702
Alternative jurat may be
considered not to invalidate
return in some circumstances

This memorandum is in response to your letter dated May 18, 1990, requesting our views regarding whether Forms 1040 and 1040X submitted by the plaintiff are valid tax returns and thus claims for refund.

ISSUES

- (1) Whether a Form 1040 in which the jurat is either altered or replaced with an alternative jurat constitutes a valid tax return.
- (2) Whether a Form 1040 or 1040X in which the jurat is either altered or replaced with an alternative jurat constitutes a claim for refund.
- (3) Whether plaintiff, who replaced the jurat with an alternative jurat, is liable for the frivolous return penalty under I.R.C. § 6702.

CONCLUSIONS

Plaintiff's objection to the jurat appears to be based on sincerely-held religious beliefs. Thus, for that reason and because the wording of the altered jurat suggests that taxpayer is impressed with the duty to tell the truth and understands that he can be prosecuted for perjury for failure to satisfy the duty, we believe the Forms 1040 and 1040X containing the altered jurat should be treated as valid returns and the Forms 1040 or 1040X in which refunds are claimed should be treated as valid claims for refund. We believe that because taxpayer's conduct of altering the jurat was not due to a position which is frivolous or a desire to delay or impede the administration of Federal income tax laws that the taxpayer should not be liable for the penalty for filing frivolous returns. Additionally, we believe because the hazards of litigating and losing this case are substantial, the United States should concede the jurat and the I.R.C. § 6702 issue.

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FACTS

Plaintiff attempted to file income tax returns (Form 1040's) for tax years [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. Although the Form 1040's were signed by plaintiff, the language within the jurat which stated that the return was signed under penalty of perjury was obliterated. Later, plaintiff allegedly filed for those years Form 1040's and 1040X's in which the jurat was altered and replaced with the following language:

I understand that I can be prosecuted for perjury should the facts I have provided be intentionally in error. I am acutely aware of my duty to provide this information accurately, completely, and to the best of my ability.¹

Because the jurat had been altered, the Commissioner determined that plaintiff had not filed valid income tax returns for [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. Further, the Commissioner determined that plaintiff was liable for the penalty under I.R.C. §§ 6702 and 6651 for the such years.

As a result of the Commissioner determining plaintiff's returns to be invalid and plaintiff to be liable for the frivolous return penalty, plaintiff filed a suit for the refund of allegedly overpaid income taxes and frivolous return penalties paid. Although plaintiff is seeking a refund of allegedly overpaid income taxes and penalties paid for [REDACTED], [REDACTED], [REDACTED] and [REDACTED], only for two of those years [REDACTED] and [REDACTED], did the Form 1040 or 1040X filed reflect that plaintiff was due a refund.

An unaltered jurat reads as follows:

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements and to the best of my knowledge and belief, they are true, correct and complete.

Because this case is in litigation and plaintiff's alternative oath is similar to the oath the Ninth Circuit in Gordon v. State of Idaho, 778 F.2d 1397 (9th Cir. 1985) found acceptable, you request at this time the benefit of our views regarding the matter.

DISCUSSION

¹ We were unable to find in the file sent to us the Form 1040 or 1040X for [REDACTED] in which the jurat was replaced with this altered language. Therefore, our conclusion only applies to [REDACTED] provided plaintiff filed a return for that year using this or similar language.

Treas. Reg. § 301.6402-3 requires that claims for refund of income tax be made on the appropriate income tax return or, if the return has already been filed, an amended return (Form 1040X). I.R.C. § 6061 provides that, "any return, statement, or other document required to be made under any provisions of the internal revenue laws or regulations shall be signed in accordance with forms or regulations prescribed by the Secretary." I.R.C. § 6065 provides that, "any return, declaration, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall contain or be verified by a written declaration that it is made under penalties of perjury." Where the perjury clause or jurat has been obliterated, courts have found the return to be invalid. See e.g., Schroeder v. Commissioner, T.C. Memo. 1989-110; Borgeson v. Commissioner, 757 F.2d 1071 (10th Cir. 1985).

In Gordon v. State of Idaho, 778 F.2d 1397 (9th Cir. 1985), plaintiff refused to take an oath or affirmation before giving his deposition. This was because plaintiff had a religious objection to taking an oath and using the word "affirmation". As a result of plaintiff's refusal, the district court dismissed plaintiff's action for failure to comply with discovery order that required him to take oath or affirmation.

In finding that the district court abused its discretion in insisting that plaintiff use either the word "sworn" or "affirm" the circuit court stated that the First Amendment's guarantee of the free exercise of religion requires that the procedural rules be interpreted flexibly to protect sincerely-held religious beliefs and practices. The circuit court concluded that any statement indicating that the deponent is impressed with the duty to tell the truth and understands that he or she can be prosecuted for perjury for failure to do so satisfies the requirement for an oath or affirmation under Fed. R. Civ. P. 30(c) and 43(d). See also United States v. Looper, 419 F.2d 1405, 1407 (4th Cir. 1969) ("all that the common law requires [of a criminal defendant testifying at trial on his own behalf] is a form of statement which impresses upon the mind and conscience of a witness the necessity for telling the truth").

In Gordon, the circuit court further stated that plaintiff's willingness to make the following statement satisfied Fed. R. Civ. P. 30(c) and 43(d):

I understand that I must tell the truth. I agree to testify under penalty of perjury. I understand that if I testify falsely I may be subject to criminal prosecution:

Similarly, in United States v. Kohnke, No. S-83-81 RAR (E.D. Cal. Dec. 17, 1986) (LEXIS, Genfed library, Dist file), the court

found the following declaration of deponents to be the legal equivalent of an oath:

Declarants understand that they must tell the truth; they understand the difference between telling the truth and telling a falsehood, they understand that telling a falsehood will subject them to criminal prosecutions and to monetary and sanctions.

In the instant case plaintiff's objection to the jurat appears to be based on sincerely-held religious beliefs. The wording of the altered jurat of plaintiff is similar to the wording the court in Gordon and Kohnke found acceptable. Additionally, the wording of the altered jurat suggests that taxpayer is impressed with the duty to tell the truth and understands that he can be prosecuted for perjury for failure to satisfy that duty. Based on these factors, we believe that the Forms 1040 and 1040X containing the altered jurat should be treated as valid returns and that the Forms 1040 or 1040X in which refunds are claimed should be treated as valid claims for refund. We also believe since plaintiff's conduct is not due to a position which is frivolous or a desire to delay or impede the administration of federal income tax laws that the taxpayer should not be liable for penalties for filing frivolous returns. See I.R.C. § 6702(a)(2).

Despite the aforementioned views, we have concerns about the administrative burden that is placed on Service personnel when a taxpayer alters the jurat. However, we also are aware of the factual and legal weaknesses of this case, which involves a taxpayer who is willing to be subjected to the penalty of perjury but has sincerely-held religious objections to the wording of the jurat. Moreover, we are aware that the loss and publication of this case could result in the widespread alteration of the jurat and an increase in the administrative burden of the Service. Thus, because the hazards of litigating the jurat issue in this case are substantial, we believe for such reason also that the United States should concede the jurat issue, and also the frivolous return penalty issue if the court has jurisdiction with respect to it.

If you have any questions or need further assistance in this matter, please call Willie E. Armstrong, Jr. at FTS 566-3335.

MARLENE GROSS
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By:

22.10.25
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